

**Petroleum Storage Tank Trust Fund Work Plan Approval Application and Agreement
for Work Plan No. _____**

Facility Name _____ Address _____ ID No. _____
Release ID _____ (“Release”)
Owner/Operator, responsible party or other person seeking PST Fund reimbursement _____ (“Claimant”)
Certified Consultant or other person performing remedial action concurrently with this Work Plan under the supervision of a
certified consultant _____ (“Contractor”)

In submitting Work Plans _____ for the above referenced Release _____ for approval, the Claimant and the Contractor collectively, the “Parties” represent and agree to the following.

Definitions

“Contractor” means the person identified as such above.

“Claimant” means the person identified as such above.

“Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board (UST).

“Fund” means the Petroleum Storage Tank Trust Fund.

“Release” means the release identified above.

“State” means the State of Utah including its agencies, officers, employees, volunteers and specifically, the Division of Environmental Response and Remediation, the Executive Secretary of the Solid and Hazardous Waste Control Board (UST) and the Petroleum Storage Tank Trust Fund.

“Work Plan” means the work plan identified above.

(1) The key personnel, for which qualifications are submitted under R311-207-3(c),
are: _____

(2) The Claimant acknowledges that the Claimant is required to obtain a payment bond from the Contractor under section 14-2-1 of the Utah Code. If the Claimant fails to do so, the Claimant is liable to each person who performed labor or services or supplied equipment or materials (“Subcontractors”) in the event the Contractor does not pay the subcontractors, even if the Claimant has paid the Contractor. See Utah Code section 14-2-2. The Claimant acknowledges and agrees that the Fund will not reimburse the Claimant for such Subcontractors’ claims for payment against the Claimant if the Fund has already made payment to the Claimant or Contractor. The Claimant understands that the premium paid for a payment bond is reimbursable. Therefore, the Claimant:

a) has required the Contractor to obtain 100 percent payment bond through a United States Treasury-listed bonding company, and attached a copy, or;

b) requests that PST fund reimbursement checks be made jointly to the Claimant, the Contractor and to the Subcontractors designated by the Parties, but waives all claims and remedies against the State if the Fund checks are not made as described above, or;

c) has obtained other equivalent assurance and waives all claims and remedies against the State if the equivalent assurance does not adequately protect the Claimant. The equivalent assurance is described as follows: _____

(3) The Parties agree that the Contractor shall have no cause of action against the State for payment. The Parties acknowledge and agree that the State is not a party to any contract with the Claimant or the Contractor for reimbursement from the Fund in the execution of this Work Plan, except to the extent provided by a contract signed by the Executive Secretary. Instead, the Claimant’s reimbursement is governed by the Utah Underground Storage Tank Act and the Utah Underground Storage Tank Rules and the Contractor is entitled to reimbursement solely under the contract he has with the Claimant.

(4) The Parties agree that they will use a subcontracting method consistent with the requirements of R311-207.

(5) The Parties agree that as a condition of performing the work under the Work Plan, the Contractor shall carry the insurance specified in R311-207-3(c)(5). The Contractor represents that certificate of insurance documenting the required insurance is attached or that a current certificate is on file with the Executive Secretary and has been provided to the Claimant. The Parties assume the risk and responsibility of ensuring that the appropriate insurance coverage is in place.

(6) The Parties agree that payments from the Fund shall be limited to amounts that are customary, legitimate, reasonable and consistent with R311-207. Unless the Parties and the Executive Secretary have entered into a written Pay-for-Performance agreement, the Parties acknowledge that payments will be for actual time and materials expended up to, but not exceeding, the amount of the Executive Secretary approved work plan and Executive Secretary approved change orders, if any.

(7) The Parties shall maintain financial and operation records in sufficient detail to document all transactions relating to Fund reimbursement for the execution of this Work Plan. The Parties shall make available for audit and inspection all such records relating to the completion of the Work Plan and related services, requirements, and expenditures until all audits initiated by State auditors are completed, or for a period of five years from the date of Fund reimbursement related to the execution of this Work Plan. Records which relate to disputes, litigation, or the settlement of claims arising out of the performance of this Work Plan, or to cost and expenses of this Work Plan as to which exception has been taken by the Executive Secretary, shall be retained by the Parties until disposition has been made of such disputes, litigation, claims, or exceptions.

(8) The Parties certify that there is a contract between the Claimant and the Contractor for the performance of work under the Work Plan for which approval is sought ("Contract") and incorporate the provisions herein into that Contract. To the extent that the Contract or amendments thereto conflict with any provisions herein, the provisions herein govern. The Parties shall provide the Contract to the Executive Secretary upon request.

(9) The Executive Secretary is a third party beneficiary of this Petroleum Storage Tank Fund Work Plan Approval Application and Agreement and may enforce its provisions.

(10) This Petroleum Storage Tank Fund Work Plan Approval Application and Agreement does not limit the Executive Secretary's rights and remedies under applicable law.

Contractor

Claimant
